

ASSEMBLY BILL

No. 1728

Introduced by Assembly Member Garcia

February 14, 2014

An act to amend Section 84308 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 1728, as introduced, Garcia. Political Reform Act of 1974.

(1) The Political Reform Act of 1974 prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for 3 months following the date a final decision is rendered in the proceeding, if the officer knows or has reason to know that the participant has a financial interest, as defined. The act also requires an officer to disclose on the record a contribution of more than \$250 from a party or participant received within the 12 months preceding a decision in a proceeding and would prohibit the official from making, participating in making, or otherwise using his or her official position to influence a decision in a proceeding in which the official knows or has reason to know that the party or participant has a financial interest in the decision.

The act defines an “agency,” for these purposes, to mean any state or local government agency, except certain entities, including local governmental agencies whose members are directly elected by the voters. The act defines a “participant,” for these purposes, as a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement

for use and who has a financial interest in the decision. The act defines a “license, permit, or other entitlement for use,” for these purposes, to include, among other things, all contracts except competitively bid, labor, or personal employment contracts.

This bill would revise the definition of “agency” to include a local government agency formed pursuant to provisions of the Water Code. The bill would revise the definition of “license, permit, or other entitlement for use” with respect to proceedings before a local government agency formed pursuant to the Water Code to apply to all contracts that are not competitively bid. The bill would deem the financial interests of a person who compensates a participant to actively support or oppose a particular decision in a proceeding on his or her behalf to also be a financial interest of the participant.

(2) Violations of the act are punishable as a misdemeanor. By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 84308 of the Government Code is
- 2 amended to read:
- 3 84308. (a) The definitions set forth in this subdivision shall
- 4 govern the interpretation of this section.
- 5 (1) “Party” means any person who files an application for, or
- 6 is the subject of, a proceeding involving a license, permit, or other
- 7 entitlement for use.
- 8 (2) “Participant” means any person who is not a party but who
- 9 actively supports or opposes a particular decision in a proceeding

1 involving a license, permit, or other entitlement for use and who
2 has a financial interest in the decision, as described in Article 1
3 (commencing with Section 87100) of Chapter 7. A person actively
4 supports or opposes a particular decision in a proceeding if he or
5 she lobbies in person the officers or employees of the agency,
6 testifies in person before the agency, or otherwise acts to influence
7 officers of the agency.

8 (3) “Agency” means an agency as defined in Section 82003
9 except that it does not include the courts or any agency in the
10 judicial branch of government, local governmental agencies whose
11 members are directly elected by the voters *except local government*
12 *agencies formed pursuant to provisions of the Water Code*, the
13 Legislature, the Board of Equalization, or constitutional officers.
14 However, this section applies to any person who is a member of
15 an exempted agency but is acting as a voting member of another
16 agency.

17 (4) “Officer” means any elected or appointed officer of an
18 agency, any alternate to an elected or appointed officer of an
19 agency, and any candidate for elective office in an agency.

20 (5) “License, permit, or other entitlement for use” means all
21 business, professional, trade and land use licenses and permits and
22 all other entitlements for use, including all entitlements for land
23 use, all contracts (other than competitively bid, labor, or personal
24 employment contracts), and all franchises. *For purposes of*
25 *proceedings before an agency formed pursuant to provisions of*
26 *the Water Code, “license, permit, or other entitlement for use”*
27 *applies to all contracts except contracts that are competitively bid.*

28 (6) “Contribution” includes contributions to candidates and
29 committees in federal, state, or local elections.

30 (b) No officer of an agency shall accept, solicit, or direct a
31 contribution of more than two hundred fifty dollars (\$250) from
32 any party, or his or her agent, or from any participant, or his or her
33 agent, while a proceeding involving a license, permit, or other
34 entitlement for use is pending before the agency and for three
35 months following the date a final decision is rendered in the
36 proceeding if the officer knows or has reason to know that the
37 participant has a financial interest, as that term is used in Article
38 1 (commencing with Section 87100) of Chapter 7. This prohibition
39 shall apply regardless of whether the officer accepts, solicits, or
40 directs the contribution for himself or herself, or on behalf of any

1 other officer, or on behalf of any candidate for office or on behalf
2 of any committee.

3 (c) Prior to rendering any decision in a proceeding involving a
4 license, permit or other entitlement for use pending before an
5 agency, each officer of the agency who received a contribution
6 within the preceding 12 months in an amount of more than two
7 hundred fifty dollars (\$250) from a party or from any participant
8 shall disclose that fact on the record of the proceeding. No officer
9 of an agency shall make, participate in making, or in any way
10 attempt to use his or her official position to influence the decision
11 in a proceeding involving a license, permit, or other entitlement
12 for use pending before the agency if the officer has willfully or
13 knowingly received a contribution in an amount of more than two
14 hundred fifty dollars (\$250) within the preceding 12 months from
15 a party or his or her agent, or from any participant, or his or her
16 agent if the officer knows or has reason to know that the participant
17 has a financial interest in the decision, as that term is described
18 with respect to public officials in Article 1 (commencing with
19 Section 87100) of Chapter 7.

20 If an officer receives a contribution which would otherwise
21 require disqualification under this section, returns the contribution
22 within 30 days from the time he or she knows, or should have
23 known, about the contribution and the proceeding involving a
24 license, permit, or other entitlement for use, he or she shall be
25 permitted to participate in the proceeding.

26 (d) A party to a proceeding before an agency involving a license,
27 permit, or other entitlement for use shall disclose on the record of
28 the proceeding any contribution in an amount of more than two
29 hundred fifty dollars (\$250) made within the preceding 12 months
30 by the party, or his or her agent, to any officer of the agency. No
31 party, or his or her agent, to a proceeding involving a license,
32 permit, or other entitlement for use pending before any agency
33 and no participant, or his or her agent, in the proceeding shall make
34 a contribution of more than two hundred fifty dollars (\$250) to
35 any officer of that agency during the proceeding and for three
36 months following the date a final decision is rendered by the
37 agency in the proceeding. When a closed corporation is a party to,
38 or a participant in, a proceeding involving a license, permit, or
39 other entitlement for use pending before an agency, the majority

1 shareholder is subject to the disclosure and prohibition
2 requirements specified in subdivisions (b), (c), and this subdivision.

3 *(e) For purposes of this section, a financial interest as*
4 *described, with respect to public officials, in Article 1(commencing*
5 *with Section 87100) of Chapter 7 of a person on whose behalf a*
6 *participant receives compensation to actively support or oppose*
7 *a particular decision in a proceeding is deemed to be a financial*
8 *interest of the participant.*

9 ~~(e)~~

10 *(f) Nothing in this section shall be construed to imply that any*
11 *contribution subject to being reported under this title shall not be*
12 *so reported.*

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 SEC. 3. The Legislature finds and declares that this bill furthers
23 the purposes of the Political Reform Act of 1974 within the
24 meaning of subdivision (a) of Section 81012 of the Government
25 Code.